

§ 452.4

body will be accepted unless the interpretation is clearly unreasonable.³

§ 452.4 Investigatory provision—application.

The provisions of section 601 of the Act provide general investigatory authority to investigate alleged violations of the Act including violations of title IV. However, section 601 in and of itself provides no remedy, and the section must be read in conjunction with the remedy and statutory scheme of section 402, i.e., exhaustion of internal union remedies and a complaint to the Secretary following completion of the election before suit can be filed. In view of the remedy provided, an investigation prior to completion of an election may have the effect of publicizing the activities or unsubstantiated allegations of one faction to the prejudice of the opposition. To avoid this result, and as a matter of sound statutory construction, the Department will exercise its investigatory authority only in circumstances in which the outcome of the election could not be affected by the investigation.⁴ Thus, the Department ordinarily will employ its investigatory authority only where the procedural requirements for a title IV investigation have been met; but in unusual circumstances or where necessary to collect or preserve evidence an investigation may be conducted after the conclusion of balloting.

§ 452.5 Effect of violation on outcome.

Since the remedy under section 402 is contingent upon a finding by the court, among other things, that the violation “may have affected the outcome of an election”⁵ the Secretary as a matter of policy will not file suit to enforce the election provisions unless the viola-

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tions found are such that the outcome may have been affected.⁶

[38 FR 18324, July 9, 1973, as amended at 50 FR 31310, Aug. 1, 1985; 63 FR 33780, June 19, 1998]

§ 452.6 Delegation of enforcement authority.

The authority of the Secretary under the Act has been delegated in part to the Assistant Secretary.

[38 FR 18324, July 9, 1973, as amended at 50 FR 31309, Aug. 1, 1985]

Subpart B—Other Provisions of the Act Affecting Title IV

§ 452.7 Bill of Rights, title I.

The provisions of title I, “Bill of Rights of Members of Labor Organizations”⁷ (particularly section 101(a)(1) “Equal Rights,” section 101(a)(2) “Freedom of Speech and Assembly,” and section 101(a)(5) “Safeguards against Improper Disciplinary Action”) are related to the rights pertaining to elections. Direct enforcement of title I rights, as such, is limited to civil suit in a district court of the United States by the person whose rights have been infringed.⁸ The exercise of particular rights of members is subject to reasonable rules and regulations in the labor organization’s constitution and by-laws.⁹

§ 452.8 Trusteeship provisions, title III.

Placing a labor organization under trusteeship consistent with title III, may have the effect of suspending the application of title IV to the trustee organization (see § 452.15).

§ 452.9 Prohibition against certain persons holding office; section 504.

Among the safeguards for labor organizations provided in title V is a prohibition against the holding of office by

³ *English v. Cunningham*, 282 F.2d 848 (C.A.D.C. 1960).

⁴ However questions involving the use of force or violence or the threat of the use of force or violence under circumstances which may violate section 610 (29 U.S.C. 530) of the Act will be referred promptly to the Department of Justice for appropriate action.

⁵ Act, sec. 402(b) (29 U.S.C. 482).

⁶ *Dunlop v. Bachowski*, 421 U.S. 560, 570 (1975), citing *Wirtz v. Glass Bottle Blowers*, 389 U.S. 463, 472 (1968) and *Schonfeld v. Wirtz*, 285 F. Supp. 705, 707–708 (S.D.N.Y. 1966).

⁷ 73 Stat. 522, 29 U.S.C. 411.

⁸ But the Secretary may bring suit to enforce section 104 (29 U.S.C. 414).

⁹ Act, sec. 101(a)(1), 101(a)(2), and 101(b) (29 U.S.C. 411).

certain classes of persons.¹⁰ This provision makes it a crime for any person willfully to serve in certain positions, including as an elected officer of a labor organization, for a period of three to thirteen years after conviction or imprisonment for the commission of specified offenses, including violation of titles II or III of the Act, or conspiracy or attempt to commit such offenses. It is likewise a crime for any labor organization or officer knowingly to permit such a person to serve in such positions. Persons subject to the prohibition applicable to convicted criminals may serve if their citizenship rights have been fully restored after being taken away by reason of the conviction, or if, following the procedures set forth in the Act, it is determined that their service would not be contrary to the purposes of the Act.

[50 FR 31310, Aug. 1, 1985]

§ 452.10 Retaliation for exercising rights.

Section 609, which prohibits labor organizations or their officials from disciplining members for exercising their rights under the Act, and section 610, which makes it a crime for any person to use or threaten force or violence for the purpose of interfering with or preventing the exercise of any rights protected under the Act, apply to rights relating to the election of officers under title IV.

Subpart C—Coverage of Election Provisions

§ 452.11 Organizations to which election provisions apply.

Title IV of the Act contains election provisions applicable to national and international labor organizations, except federations of such organizations, to intermediate bodies such as general committees, conferences, system boards, joint boards, or joint councils, certain districts, district councils and similar organizations and to local labor

organizations.¹¹ The provisions do not apply to State and local central bodies, which are explicitly excluded from the definition of “labor organization”.¹² The characterization of a particular organizational unit as a “local,” “intermediate,” etc., is determined by its functions and purposes rather than the formal title by which it is known or how it classifies itself.

§ 452.12 Organizations comprised of government employees.

An organization composed entirely of government employees (other than employees of the United States Postal Service) is not subject to the election provisions of the Act. Section 3(e) of the Act, defining the term “employer,” specifically excludes the United States Government, its wholly owned corporations, and the States and their political subdivisions from the scope of that term, and section 3(f) defines an “employee” as an individual employed by an “employer.” Since a “labor organization” is defined in section 3(i) as one in which “employees” participate and which exists in whole or in part for the purpose of “dealing with employers,” an organization composed entirely of government employees would not be a “labor organization”¹³ as that term is defined in the Act. However, section 1209 of the Postal Reorganization Act provides that organizations of employees of the United States Postal Service shall be subject to the Labor-Management Reporting and Disclosure Act. A national, international or intermediate labor organization which has some locals of government employees not covered by the Act and other locals which are mixed or are composed entirely of employees covered by the Act would be subject to the election requirements of the Act. Its mixed locals

¹¹ For the scope of the term “labor organization,” see part 451 of this chapter.

¹² See § 451.5 of this chapter for a definition of “State or local central body.”

¹³ Most labor organizations composed of Federal Government employees are subject to the standards of conduct provisions of the Civil Service Reform Act, 5 U.S.C. 7120, or the Foreign Service Act, 22 U.S.C. 4117. The regulations implementing those statutory provisions are contained in parts 457–459 of this chapter.

¹⁰ Act, sec. 504(a) (29 U.S.C. 504), as amended by the Comprehensive Crime Control Act of 1984, Public Law 98–473, secs. 229, 235, 803 and 804. See text at footnote 23 for a list of the disabling crimes.